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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEJANDRO ORDONEZ,

Plaintiff - Appellant,

v.

JEFFREY JOHNSON, AUSA; et al.,

Defendants - Appellees.

No. 04-56940

D.C. No. CV-99-09229-CBM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, Chief Judge, Presiding

Submitted November 8, 2005**

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Federal prisoner Alejandro Ordonez appeals pro se from the district court's judgment dismissing his Bivens action alleging that defendants violated his constitutional rights by depriving him of his property subsequent to his arrest and

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

conviction. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a district court's dismissal of a *Bivens* action, *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004), and we affirm.

The district court did not err in dismissing the action as to the federal defendants because Ordonez sued them in their official capacities and they have sovereign immunity. *See Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1987) (“a *Bivens* action can be maintained against a defendant in his or her individual capacity only, and not in his or her official capacity”).

The district court also properly dismissed the claim against defendant Gougler, a state employee, without prejudice.

Ordonez's remaining contentions are without merit

AFFIRMED.